

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of) MM Docket No. 96-209
Morgan Media, Inc.)
Licensee of Station WAUB(AM),)
Auburn, NY)
Order to Show Cause Why the)
License for Station WAUB(AM),)
Auburn, NY Should Not Be Revoked)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Honorable Richard L. Sippel,
Administrative Law Judge

MOTION FOR SUMMARY DECISION

MORGAN MEDIA, INC. ("Morgan"), by its counsel, and pursuant to §1.251(a)(2) of the Commission's Rules and the Presiding Judge's Order, FCC 97M-18, released herein on February 12, 1997, hereby moves for summary decision of the issues designated herein.

1. By way of background, an Order to Show Cause and Hearing Designation Order ("Show Cause Order"), DA 96-1681, released October 11, 1996, by the Assistant Chief, Audio Services Division, Mass Media Bureau (the "Bureau"), designated the following issues for hearing herein:

- (1) To determine whether Morgan has the capability and intent to expeditiously resume broadcast operations of WAUB(AM) consistent with the Commission's Rules;
- (2) To determine whether Morgan has violated §§73.1740 and/or 73.1750 of the Commission's Rules;
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Morgan is qualified to be and remain the licensee of Station WAUB(AM).

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2. With respect to Issue No. 1, the following undisputed facts are relevant: By letter of February 6, 1997, the Bureau granted Morgan Special Temporary Authority ("STA") to resume operations of Station WAUB with parameters at variance and/or reduced power while maintaining the monitor points within authorized limits. In accordance with the STA and pursuant to a Time Brokerage Agreement ("TBA") between Morgan and Auburn Broadcasting, Inc. ("Auburn"), Station WAUB resumed operations on February 7, 1997, and the Commission was notified accordingly. Thereafter, on March 7, 1997, Morgan and Auburn filed an application (FCC Form 314) for consent to the assignment of license of Station WAUB from Morgan to Auburn.

3. As set forth in the attached declarations of Richard E. Morgan, President of Morgan, and George W. Kimble, President of Auburn, Station WAUB resumed operations on February 7, 1997, and it is contemplated that the Station will continue to operate under the TBA until Morgan and Auburn consummate the assignment of the Station WAUB license pursuant to prior Commission consent. Following consummation of the assignment of license, it is contemplated that Station WAUB will continue to operate under the ownership of Auburn.

4. Accordingly, Morgan submits that in light of the foregoing, no genuine issue of material fact relative to Issue No. 1 remains to be tried at a hearing. Morgan has demonstrated that it had both the capability and intent to resume station operations expeditiously. Moreover, Station WAUB is now operating and it will continue to operate in the future under the

operating and it will continue to operate in the future under the ownership of Auburn.

5. With respect to Issue No. 2, which addresses whether Morgan violated §73.1740 and/or §73.1750 of the Rules¹, Morgan submits the following: On February 9, 1996, the Bureau granted Morgan temporary silent authority for Station WAUB through August 9, 1996. However, because of financial difficulties, Morgan did not have FCC counsel during this time period. Also, with its attention directed toward attempting to locate a buyer for WAUB, Morgan neglected to timely request an extension of temporary silent authority before the August 9, 1996 expiration. See attached declaration of Richard E. Morgan.

6. Less than two months after the August 9, 1996 expiration of WAUB's temporary silent authority, and without making any formal or informal inquiry regarding Morgan's intentions with respect to WAUB, the Bureau adopted the Show Cause Order. Morgan admits that it technically violated §73.1740 of the Rules due to an oversight. Accordingly, no genuine issue of material fact remains to be tried at hearing on the §73.1740 violation.

7. Importantly, Morgan also submits that since its violation of §73.1740 lasted only two months before the Show Cause Order issued, it was, at most, only a de minimis violation.

¹ In essence, under §73.1740, broadcast licensees are required to obtain and maintain Commission authority for a station's silent status, and under §73.1750, a broadcast licensee must notify the Commission of permanent discontinuance of operation and forward the station license to the Commission for cancellation.

Certainly, under the circumstances described above, such a minor technical violation does not warrant the harsh sanction of disqualification of Morgan, or the revocation of the WAUB license. Indeed, it is respectfully submitted that even a lesser monetary sanction is both unwarranted and unnecessary in this case. Morgan has been admonished sufficiently by the issuance of the Show Cause Order and, in any case, Morgan does not have the financial ability to pay any monetary fine.²

8. Although the Show Cause Order indicates that Morgan may also have violated §73.1750, Morgan submits that at no time prior to the issuance of the Show Cause Order, did Morgan intend to permanently discontinue operation of WAUB. Indeed, in a letter dated October 5, 1995, from Morgan's President to the Commission's staff, Morgan requested the Commission to give it the opportunity to find a buyer for the station. See copy attached hereto. Morgan's clear intent was to find a buyer for WAUB so that station operations were not permanently discontinued. Given this, Morgan did not violate §73.1750 of the Rules. Accordingly, there is no question of material fact to be tried at a hearing with respect to this issue.

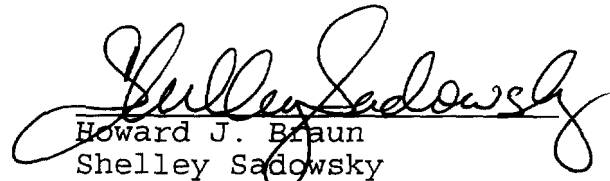
9. In sum, Morgan respectfully submits that this proceeding may be terminated by summary decision instead of holding a hearing on the designated issues. The test is whether a genuine

² The Presiding Judge can take official notice of the terms of the Asset Purchase Agreement between Morgan and Auburn, a copy of which was filed with the Form 314 assignment application. The total purchase price will be paid to Morgan's secured creditor, Cayuga Savings Bank, not to Morgan.

question of material fact remains, and Morgan has demonstrated that with WAUB's resumption of service and planned sale, there is no issue regarding whether WAUB will continue to operate. Similarly, there is no issue as to Morgan's admitted, albeit de minimis, violation of §73.1740 of the Rules. Nor is there a legitimate issue with respect to an alleged violation of §73.1750 of the Rules.

WHEREFORE, for the reasons set forth above, Morgan Media, Inc. requests the Presiding Judge to issue an Order granting summary decision of the issues designated herein and terminating the proceeding without any sanctions imposed against Morgan Media, Inc. or Station WAUB.

Respectfully submitted,



Howard J. Braun
Shelley Sadowsky

Rosenman & Colin LLP
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Washington, DC 20036
202/463-4640

Counsel for Morgan Media, Inc.

March 14, 1997

DECLARATION


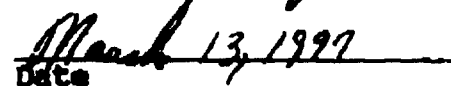
I, Richard E. Morgan, hereby declare as follows:

1. I am the President and sole shareholder of Morgan Media, Inc. ("Morgan"), licensee of Station WAUB(AM), Auburn, New York. This declaration is intended to support a Motion for Summary Decision to be filed by Morgan in the FCC license revocation proceeding, MM Docket No. 96-209.

2. Station WAUB resumed operations on February 7, 1997, and has remained operational since that date. I intend for the Station to continue to operate under the Time Brokerage Agreement which Morgan entered into with Auburn Broadcasting, Inc. ("Auburn") while the application for FCC consent to the assignment of the WAUB license to Auburn is pending. Assuming that application is granted, Morgan and Auburn will close the transaction and I have every reason to believe that WAUB will continue to operate under Auburn's ownership.

3. By letter of February 9, 1996, the FCC granted Station WAUB temporary authority to remain silent through August 9, 1996. Unfortunately, I overlooked the necessity to timely request an extension of that authority prior to the August 9, 1996 expiration date. I regret that I did not comply with the FCC rules requiring a licensee to maintain FCC authority for a station to remain silent. At the time, my attention was directed toward attempting to locate a buyer for WAUB and, because of my severe financial difficulties, I did not have FCC counsel to advise me. The Order to Show Cause and Hearing Designation Order, which Morgan received approximately two months after the silent authority for WAUB expired, certainly has served to make me mindful of the necessity to timely comply with FCC requirements.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.


Richard E. Morgan

Date

From: James L. Oyster TO: George Kimble

Date: 3/13/97 Time: 4:10:00 PM

Page 2 of 2

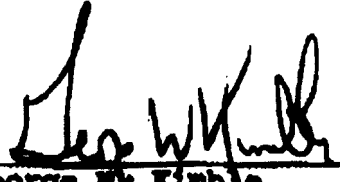
DECLARATION

I, George W. Kimble, hereby declare as follows:

1. I am the President and majority shareholder of Auburn Broadcasting, Inc. ("Auburn"), which is the proposed assignee and time broker of Station WAUB(AM), Auburn, New York. This declaration is intended to support a Motion for Summary Decision to be filed by Morgan Media, Inc. ("Morgan") in the FCC license revocation proceeding, MM Docket No. 96-209.

2. Since February 7, 1997, Auburn has been brokering the programming of Station WAUB under a Time Brokerage Agreement ("TBA") between Auburn and Morgan, a copy of which was filed with the Commission on March 7, 1997, as part of the Form 314 application for consent to the assignment of license of Station WAUB by Morgan to Auburn. Auburn will continue to broker the programming of Station WAUB under the TBA while the assignment application is pending at the FCC. Following the grant of the assignment application, and the subsequent closing between Auburn and Morgan, WAUB will continue to operate under Auburn's ownership.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.



George W. Kimble

3/13/97

Date

October 5, 1995

Federal Communications Commission
1919 M Street, N.W. Room 342
Washington, D.C. 20551

Attn: Sharon Lofty:

In regard to the FCC letter I received dated Sept. 27, 1995, I Richard E. Morgan, The president of Morgan Media Inc sent a letter to the Commission in late July of 1995, stating that WAUB AM 1590 had gone off the air effective at 10PM June 30, 1995. At the present time I am not able to locate my copy of the letter. Therefore I am sending this letter to inform the Commission on the status of the station. The station remains off the air, a decision which I made last June due to severe financial difficulties. In my earlier letter I requested permission to retain the broadcast license for a minimum of 6 months in order to try and obtain a buyer for the property. I am again requesting that permission and I am more than willing and able to do anything that the Commission asks in order to have my request granted. If there are any forms the Commission has to have on file with my signature, kindly forward those forms to me and I will promptly return them to you. Thank you in advance for your consideration concerning this matter.

Sincerely,




Richard E. Morgan
President-Morgan Media, Inc.
5 Silver Avenue
Auburn, New York 13021

CERTIFICATE OF SERVICE

I, Maria Alvarez-Newsom, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 14th day of March, 1997, I have caused to be hand-delivered, a copy of the foregoing "Motion for Summary Decision" to the following:

Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 228
Washington, D.C. 20554

James Shook, Esquire
Complaints and Investigations
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554


Maria Alvarez-Newsom